

**FINDINGS AND RECOMMENDATIONS
REGARDING THE
PROPOSED ISSUANCE OF ENHANCEMENT OF SURVIVAL PERMITS
TO THE
ROSEBURG RESOURCES COMPANY AND OXBOW TIMBER I, LLC**

I. BACKGROUND

The above-listed parties (hereafter referred to as the applicants) have applied for an Endangered Species Act enhancement of survival permit that would authorize take of the threatened northern spotted owl in conjunction with their implementation of a Safe Harbor Agreement (Agreement) for the spotted owl. The Agreement would be implemented in the Oregon Coast Ranges study area of the Service's Barred Owl Removal Experiment in Lane County, Oregon.

The proposed Agreement is based on, and supports, the Service's barred owl removal experiment. Barred owls are a significant threat to conservation of the spotted owl. Under the Agreement, the Service and our contractor, the U.S. Geological Survey, will be allowed to access to the applicants' lands within the experiment study area to conduct barred owl surveys and removal for the duration of the experiment in return for authorization to take spotted owls on up to 19 currently unoccupied sites (all of which have not had resident spotted owls respond to surveys in 3 or more years) during normal forest management activities that may be reoccupied as a result of barred owl removal. Access to the applicants' lands is crucial to efficient and effective implementation of this experiment because of barred owl presence on these lands. Under the Agreement, disturbance of actively nesting spotted owls would be avoided and spotted owl habitat to support actively nesting spotted owls will be maintained on any reoccupied sites during the nesting season. The term of the Agreement and the permits is 10 years. This term represents the period of removal and five years following the cessation of removal. We anticipate that conditions in terms of spotted owl populations should return to pre-experiment levels by this time. If the removal effort is extended, the proposed permit will likely be extended for a comparable term.

The following documents were relied upon in the preparation of this statement of findings and recommendations and are herein incorporated by reference, as provided for in 40 CFR §1508.13: (1) the Final Safe Harbor Agreement (USFWS 2015a); (2) the Final Environmental Assessment (EA) for this proposed permit action (USFWS 2015b); and (3) the Service's Biological Opinion on this action (USFWS 2012c). The decision record for these findings and recommendations is on file at the Service's Oregon Fish and Wildlife Office in Portland, Oregon.

II. DESCRIPTION OF THE PROPOSED ACTION

See the description provided above. The utility of these permit actions is directly related to the Service's barred owl removal experiment.

Barred Owl Removal Experiment

Competition from barred owls has been identified as one of the primary threats to the survival and recovery of the northern spotted owl (USFWS 2011, p. II-2). Pursuant to Recovery Action 29 of the 2011 *Revised Recovery Plan for the Northern Spotted Owl* (USFWS 2011), the Service is conducting a barred owl removal experiment within demographic study areas to determine the benefits of such removal to the spotted owl. The experiment is being conducted within the Oregon Coast Ranges west of Eugene, Oregon.

To conduct the experiment, researchers will survey each study area for barred owls. Barred owls will be removed from the treatment portion of the study area during the non-breeding season (approximately September to March). Ongoing spotted owl surveys conducted under the Northwest Forest Plan Monitoring Program will also continue within the study area; the Service will use the data from these ongoing surveys to determine the effect of barred owl removal on the spotted owl. The experiment is anticipated to run for four years to provide for statistically significant results, after which barred owl removal within the study area will cease. However, the removal of barred owls may be extended for up to 10 years if necessary to reach a reasonable level of certainty. We expect barred owls to reinvade the treatment area within five years of cessation of the removal effort. Information from this experiment is critical to the development of a long-term management strategy to address the barred owl threat to the spotted owl.

While the experiment is focused on Federal lands, the study area includes significant interspersed private land including lands owned by the applicants. While the experiment can be conducted by surveying from public roads and removing barred owls on Federal lands, the results would be more credible and the efficiency of removal greatly enhanced by researcher access to the applicants' lands.

III. PUBLIC COMMENTS

On November 3, 2015, we issued a Federal Register Notice of Availability of the draft Agreement and draft EA for a 30-day public review period (80 FR 67779). The public comment period closed on December 3, 2015. During the comment period, the draft Agreement and draft EA were available on a website and in hard copy at the Service's Oregon Fish and Wildlife Office in Portland, Oregon.

We received two public comments from non-governmental organizations. Both were concerned about the potential loss of spotted owl habitat that would occur under the Agreement. Our responses to those comments are provided in Appendix A of the FONSI for the proposed action.

ENHANCEMENT OF SURVIVAL PERMIT ISSUANCE CRITERIA - ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32 (c)(1), the Service finds that the issuance criteria for an Endangered Species Act section 10(a)(1)(A) permit associated with the above Agreement are met, as detailed below:

A. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Agreement.

Take of the northern spotted owl authorized under the proposed permits and caused by activities covered under the Agreement, which allows for a return to pre-determined baseline conditions set forth in the Agreement, would be incidental to otherwise lawful activities. The covered activities are standard forest management treatments and related activity that are covered by the Oregon Forest Practices Act. The take authorization is contingent upon the applicants' compliance with the terms of the permit and with all applicable Federal, State, Tribal, and local laws and regulations.

B. Implementation of the terms of the Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Agreement otherwise complies with the Service's Safe Harbor policy.

This Agreement supports implementation of Recovery Action 29 (barred owl management) in the final recovery plan for the spotted owl. To develop a barred owl management strategy that will conserve the spotted owl, the Service needs information on the feasibility of potential management tools. Scientists, biologists, and managers have identified barred owl removal as the most realistic and practical tool described to date for such management. Given the controversy around any removal of wildlife, particularly raptors, the Service needs clear and credible information on the effectiveness and cost of removal as a management tool.

To gather the most credible information from a removal experiment, the Service chose to conduct the Barred Owl Removal Experiment at active spotted owl demography study areas for which over a decade of pre-treatment data are available. While these study areas are focused on Federal lands in most cases, they still contain significant patches of interspersed non-Federal lands. To complete the experiment in the most efficient and complete manner, the Service requires access on non-public roads and the ability to remove barred owls on non-Federal lands within the treatment area. Access to the applicants' lands in this area is important to the efficient and effective completion of the Barred Owl Removal Experiment within a reasonable timeframe.

All 9 of the currently occupied spotted owl sites that overlap the applicants' lands or occur in areas where the applicants have existing easements or agreements for timber harvest activities are within the baseline for the Agreement and no take of spotted owls at these sites would be authorized under the proposed permit. If barred owl removal does allow spotted owls to reoccupy some of the spotted owl sites that are not currently occupied (i.e., not in the baseline for the Agreement), the applicants would be allowed to take these spotted owls. This includes up to 13 spotted owl sites on the applicants' lands and 6 spotted owl sites that lie within areas where the applicants have easements or agreements. It is highly unlikely that these sites would ever be re-occupied by spotted owls without the removal of barred owls.

When the removal of barred owls on the study area ends, the Service anticipates that barred owl populations will rebound to pre-treatment levels within 3 to 5 years. This is likely to result in the extirpation of spotted owls from these re-occupied sites. Therefore, any occupancy of these sites by spotted owls is likely to be temporary and short-term unless and until a long-term barred owl management program is implemented in this area.

The primary conservation value of the Barred Owl Removal Experiment is the information it provides on the efficacy of removal as a tool to manage barred owl populations for the conservation of the spotted owl. This information is crucial to the development of a long-term barred owl management strategy that is essential to the conservation of the spotted owl. Thus, the take of spotted owls on the temporarily-reoccupied sites is more than offset by the value of the information gained from the experiment and its potential contribution to a long-term barred owl management strategy within the range of the spotted owl. On that basis, this Agreement advances the recovery of the spotted owl.

C. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

The Service conducted a Section 7 consultation on this proposed permit action to ensure that it does not result in jeopardy to the spotted owl. After reviewing the current status of the spotted owl, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, the Service concluded in the biological opinion that the proposed action avoids jeopardizing the continued existence of the spotted owl. The Service reached this conclusion because any adverse impacts caused by take of the spotted owl that is authorized under the proposed permits will be tempered by the temporary beneficial effects of allowing spotted owls to re-occupy historic sites and by enhancing the credibility of the experiment to inform the development of a large scale and long-term barred owl management strategy. As noted above, the proposed permit action is consistent with the final recovery plan for the spotted owl.

D. Implementation of the terms of the Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

The Service is not aware of any law or regulation that would prevent implementation of the Agreement. Forest land management activities on private lands in Oregon are regulated under the Oregon Forest Practices Act (ORS 527.610). This law recognizes permits issued by the Service. Thus, landowners that enroll in an Agreement for barred owl control receive regulatory assurances under the Forest Practices Act under Oregon Administrative Rule 629-665-0210(5). The rule states "Exceptions to the requirements for protecting northern spotted owl nesting sites are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Act."

The proposed permits are conditioned on the applicants' compliance with the permit terms and conditions, and with all applicable State, Federal, Tribal, and local laws or regulation. Failure to comply can result in suspension or revocation of the permits.

E. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.

The Barred Owl Removal Experiment, on which this Agreement is predicated, implements Recover Action 29 of the final recovery plan for the spotted owl.

None of the lands owned by the applicants are included in designated critical habitat for the spotted owl.

The effect of the Barred Owl Removal Experiment on the ongoing spotted owl demography study in the Oregon Coast Ranges Study Area was fully evaluated in the Service's *Final Environmental Impact Statement for the Barred Owl Removal Experiment*, and was found to be minimal.

F. The applicant has shown capability for and commitment to implementing all of the terms of the Agreement.

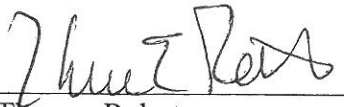
The applicants' responsibilities under the Agreement are within the normal operating procedures of both companies, and they have clearly demonstrated their capability to implement these responsibilities.

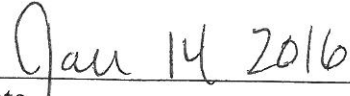
V. GENERAL CRITERIA AND DISQUALIFYING FACTORS

The Service has no evidence that the permits should be denied on the basis of the criteria and conditions set forth in 50 CPR 13.21 (b-c). The applicants have met the criteria for the issuance of the permits and do not have any disqualifying factors that would prevent the permits from being issued under current regulations.

VI. RECOMMENDATIONS ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed permit actions, I recommend issuance of permit number TE84825B-0 to the Roseburg Resources Company and permit number TE84826B-0 to Oxbow Timber I, LLC to authorize the incidental taking of spotted owls in conjunction with their implementation of the Agreement for the spotted owl in Lane County, Oregon.


Theresa Rabot
Deputy Regional Director, Region 1
U.S. Fish and Wildlife Service


Date

SUPPORTING REFERENCES

USFWS (U.S. Fish and Wildlife Service). 2011. Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*). U.S. Fish and Wildlife Service, Portland, Oregon.

USFWS (U.S. Fish and Wildlife Service). 2015a. Final Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company, and Oxbow Timber I, LLC, and The USFWS in the Oregon Coast Ranges Study Area. U.S. Fish and Wildlife Service, Portland, Oregon.

USFWS (U.S. Fish and Wildlife Service). 2015b. Final Environmental Assessment for the proposed issuance of Enhancement of Survival Permits to Roseburg Resources Company and Oxbow Timber I, LLC to authorize the incidental taking northern spotted owls in Lane County, Oregon. U.S. Fish and Wildlife Service, Portland, Oregon.

USFWS (U.S. Fish and Wildlife Service), 2012c. Biological Opinion Addressing the Proposed Issuance of an Endangered Species Act Enhancement of Survival Permit for a Safe Harbor Agreement for the Northern Spotted Owl between Roseburg Resources Company Oxbow Timber I, LLC and the U.S. Fish and Wildlife Service. U.S. Fish and Wildlife Service, Portland, Oregon.